

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

August 2011

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It's That Time of Year Again...School Registration Checklist

Every August, like clockwork, like the cycles of the moon and the ocean, public schools start again. Students and families relocate more than in the past. Public school choice options mean students change schools more frequently. Utah law directs public school districts and charter schools to require certain information from students and parents when children begin public school or when they enroll in a school for the first time. For example:

- Parents of a child under seven must submit a required VISION SCREENING form from a designated health care professional stating that child has received vision screening--child may be exempt based on a parent's personal beliefs. Most elementary schools conduct free vision screening during the fall to satisfy this requirement.
- All students (including private school students) must receive require IMMUNIZATIONS—as designated by the State Health Department—before attending school. See Administrative Rule 396-100-3 for a list of

required immunizations.

- → Students may be allowed to attend conditionally if they have had one dose of each required vaccine or
- → Parents may exempt their child based on personal beliefs (forms available at the local health department) or
- → Parents may exempt their child with a certificate from a physician stating that immunization(s) endanger the child's life or health.
- → Children who are exempt from immunizations may be excluded from school in the event of an outbreak of a disease for which immunizations are required.
- Parents shall provide a BIRTH CERTIFICATE or "other reliable proof" of the student's identity and age (along with an affidavit explaining the inability to provide the birth certificate) when a child enrolls in a school for the first time.
- The Department of Health may also require DENTAL, HEARING,

and/or ABNORMAL SPINAL CURVATURE screenings prior to a student's enrollment in public school.

 Local school boards may require students entering their schools to have a heath examination. They must allow for personal exemptions from any local requirements.

Public schools welcome all children. However, school personnel may require parents to provide proof of residency in a school district; they may also require parents to show a legal relationship to the children they are registering for school. School personnel may not request of children or their parents proof of immigration status. The public schools of the United States are the real melting pots. In Utah, children just enroll, no application necessary.



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UPPAC CASES

The State Board of Education accepted the recommendation of UPPAC to reinstate the licenses of Kelly Jo Larsen, whose license was suspended for being under the influence of alcohol at school during her contract hours.

The State Board also accepted a Stipulated Agreement for suspensions of William Evan Johnson's license for a period of 6 months and for revocation of his administrative license. His suspension results from circumventing express district instruction relating to employing family members by falsifying grant applications, and by failure to follow financial district policies.

Stipulated Agreements for suspension of licenses for Carter Lynn Miller and for Russell Judd were also accepted. Mr. Miller abused prescription drugs and asked students to aid him in abusing prescription drugs. Mr. Judd was charged with assault when he grabbed the student's necktie and tightened it around the student's neck in anger.

Recent Education Case

Sabol v. Walter Payon College
Preparatory High School, 2011 WL
1401997 (N.D. Ill.) In April, 2011 the
Illinois District Court upheld a student
suspension when it determined that the
school did nothing to "shock the
conscience" when it suspended a
student for consuming alcohol on a
school related trip. In
the summer before
her senior year, the
student Elizabeth
Sabol-Jones took part
in a summer schoolsponsored trip to

China. Before leaving, school officials informed Sabol-Jones and her parents multiple times that the use of alcohol was strictly prohibited. Despite this directive, Sabol-Jones purchased and consumed alcohol on the trip. When confronted, she confessed to the violation. Sabol-Jones, along with the other students who violated the no-alcohol rule, were suspended for 10

days upon returning home. Sabol-Jones contested the suspension in federal court., and her case was dismissed on summary judgment. The court, though not an authority in Utah, expressed legal principles common throughout the country with regard to school's autonomy in imposing student discipline. The court noted that the student's "overarching problem is a failure to appreciate that the constitutional protections afforded students in disciplinary proceedings, though not entirely nonexistent, are nonetheless diminished. That is so because courts are extremely hesitant to secondguess the disciplinary decisions made by those entrusted with educating the nation's children." The student claimed that her substantive due process rights were violated by the school's actions, a claim that requires a finding that the government abused its power so arbitrarily that it "shocks

the conscience." The court stated, "In the context of this action, it is undisputed that school officials possess the authority to suspend students for violations of the prohibition on the use and possession of alcohol . . . Simply put, there is nothing conscience-shocking about her ten-day suspension." The court continued, "The system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board members."

In line with courts across the country, the Illinois court was quick to reaffirm a school's discretion in imposing disciplinary sanctions. As long as the constitutional requirements of due process are met, courts will more likely than not uphold the school's decision.

UPPAC Case of the Month

Working with students with disabilities is no easy task, and our hats go off to all special educators. Occasionally, a student with a disability will become extraordinarily defiant and, if low functioning, may be very difficult to manage and to discipline. This often causes a great deal of frustration for teachers who find themselves struggling to get a disobedient student in line. However, no matter the legitimate and justified frustration, it is NEVER okay to use physical force to make a student do what you want him or her to do. While this is true for all students—and has been the subject of this newsletter on multiple occasions—it is even more of a serious violation when dealing with students with disabilities. Because of the heightened protection afforded to students with disabilities, using force with these students is especially problematic.

It was problematic, for example, when a

special education teacher came to her wits' end with a student who refused to walk herself to the office. The student was in 5th grade and was, according to her mother, oppositionally defiant. She was by all reports a very difficult child to handle. When she was sent to the office by her teacher, the student sat down on the floor and refused to go. She extended her arm to her teacher suggesting, "make me." The teacher then took the student's arm and dragged her down the carpeted hallway for more than 50 yards. The student had sweatpants on which allegedly came down and caused a carpet burn on the student's bottom.

It was also problematic when a new teacher placed in a rather difficult classroom with four very low functioning students and without supportive aides, tried to manage the students through yelling, slapping their hands, yanking on their arms to move them, and standing over them in an intimidating manner.

In both situations, the frustration of the teachers in dealing with their students is certainly understandable. But in neither situation were the actions of the teachers justifiable. Avoid physical force in all circumstances; especially avoid physical force when working with students with special needs.



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Eye on Student Suspension and Expulsion Laws

In July, researchers in Texas released the most comprehensive analysis of school suspension and expulsion policies ever conducted. The study, titled, "Breaking Schools' Rules" looked at individual school records tracking all seventh graders in Texas-1 million of them—for 6 years. The findings: 60% of those students were suspended or expelled at least once between their 7th and 12th grade years. The study went on to say that the frequency with which Texas students are suspended and expelled reflects a 20 year trend that has seen the rate double nationally.

Certainly, students who are consistently disruptive and/or violate school rules can and should be disciplined. However, the study raised an interesting question about the effectiveness of suspensions and expulsion as the sole means to remedy poor student behavior. As one educator said, "When all you have is a hammer, every problem looks like a nail."

Utah's laws recognize that keeping students in school is always a better alternative to kicking students out of school. Where a student's behavior is not of such a violent or extreme nature that immediate removal is required, schools are required to make efforts to implement a remedial discipline plan that would allow the student to remain in school. Some alternatives include in-school suspension, or allowing the parents/guardian to attend class with the student.

Aside from the considerations of effectiveness, both state law and federal law impose specific procedures when suspending or expelling a student. For example, when a student is suspended, parents must be notified immediately and the notification must include the time of the suspension, the

grounds for the suspension, and a time and place parents/guardians can meet with a designated school official to review the suspension. Schools must work with parents if the suspension is longer than 10 days to determine how to provide the student with an alternative education plan, and if the student is under 16, the school must contact the parent/guardian of the suspended student at least monthly to determine the student's progress. Also, schools must maintain a record of all suspended or expelled students.

When it comes time to expel a student or impose a longer term suspension (more than 10 days), the law requires that the student be given a hearing. Parents should be notified immediately of the expulsion and the charges, and a hearing should be scheduled within 5 school days of the expulsion. An objective hearing officer should be brought in to hear the evidence, which can be introduced in the form of live witnesses or evidence. Hearsay evidence is okay but cannot be the only evidence on which the hearing officer bases his decision. If witnesses are brought in, notice of who those witnesses will be must be provided to the student prior to the hearing so the student has time to prepare and respond to the allegations. There is no protection against self-incrimination at these expulsion hearings: in other words, the student cannot "plead the 5th." At the close of the hearing, the hearing officer should make the determination of whether the student is guilty of the charged offense under a "preponderance of the evidence standard." This means the hearing officer does not need to determine that the student is guilty beyond a reasonable

doubt; just that is it more likely than not that the student did what she is alleged to have done. The hearing officer then must determine if the school acted appropriately in expelling the student. Section 53A-11-904 of the Utah Code lists the appropriate grounds for suspending or expelling a student. These include "frequent or flagrant willful disobedience, defiance of proper authority, or disruptive behavior, including the use of foul, profane, vulgar, or abusive language; willful destruction of school property; behavior that imposes an immediate or significant threat to the welfare, safety, or morals of other students or school personnel; or possession of alcohol. Unless the superintendent determines that a lesser penalty is more appropriate, a student MUST be suspended or expelled for the following: any serious violation affection another student or staff member or on school property or at a school activity; the possession of a weapon or explosive; use of a pretend weapon if the intent is it intimidate another person; the sale of drugs or controlled substances; or any action that, if committed by an adult, would be a felony or class A misde-

Maintaining discipline in schools is important to the academic success, as well as the safety and security, of all our students. It is also important, however, to be sure we're exhausting our options before kicking students out wily nily, and that we're providing appropriate due process according to state and federal laws before we deny a student his property right in education.

Your Questions

- **Q:** Some teachers and parents have suggested that students attending dances or proms be searched for illegal substances or weapons. Is this a good idea?
- A: When school officials in Santa Fe introduced an intrusive prom search policy, a federal district court ordered the school to follow specific procedures to protect students' rights. The court told administrators to provide clear instructions to parents/students of "items that may not be brought into dances." School officials should do visual inspections first. Then, if necessary, use "wands" or

What do you do when...?

ask students to unzip or open jackets or purses. A pat down search—or a more intrusive search—is justified only if school officials think they have reasonable grounds based on the previous steps. A more intrusive search should only be executed with two school employees present and with serious consideration of what they believe students may have concealed.

- **Q:** I am a beginning third grade teacher and my district has asked me to develop, as part of my assignment, some remedial reading activities for low performing students. I am fluent in Spanish and some of the activities will benefit ELL students. Will the materials that I develop belong to me or to Sunnyville Elementary/School District?
- **A:** If the assignment is given by your employer and you are expected to develop the materials on contract time, during any preparation or planning

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Utah State Office of Education 250 East 500 South P.O. Box 144200 Salt Lake City, Utah 84114-4200

Phone: 801-538-7832 Fax: 801-538-7768 Email: heidi.alder@schools.utah.gov





The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

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time and using school equipment and resources, the materials will belong to your employer. The materials may only possibly belong to you if you have a very clear and specific agreement (with your employing school district/charter school) in writing prior to the development of the materials.

Q: I want to plan ahead for Back-to-School Night. I know that I have several divorced parents—and many step-parents--among parents of students in my class. I want everyone to feel welcome and to visit my class to support their children, but I do not want to play referee or have last-minute objections from parents who can't get along and may embarrass their children at Back-to-School Night or at parent teacher conferences. What can I do to prepare for this?

A: Under federal law, non-custodial parents have rights to see and review student RECORDS equal to the rights of custodial parents. Parents with joint custody have equal rights to REVIEW student RECORDS. Non-custodial parents do not have the same rights to interact with teachers that custodial parents do. Even so, parents can be warned (of course privately and tactfully) that they are ALL welcome if there is no disruption and if they can act appropriately to create a positive learning environment for their children and all of the children in the class and school. If there is disruption or if various sets of parents demand to meet separately with the teacher, teacher may work and communicate only with the custodial parent(s).

Q: Our elementary school publishes a school directory. Does this directory create an exemption for the school in providing parents with a list of "directory

information" items and allowing parents to direct school NOT to disclose even directory information about a student?

A: No, school directories should only be published if school has specific permission from parents to include information about



students and students' families OR if school has completed the required and timely FERPA form that outlines for parents the school's/district's definition of directory information and allows parent to direct school NOT to provide even directory information about student. This is true whether school has the traditional printed school directory or if the school maintains an online directory for families in the school community.

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